No. 9011

In the United States Circuit Court of Appeals for the Ninth Circuit

L. Kenneth Schoenfeld, Herbert A. Schoenfeld, Jr., and Ralph A. Schoenfeld, Administrators, de Bonis non, cum Testamento Annexo, of the Estate of Herbert A. Schoenfeld, Deceased, petitioners

v.

Commissioner of Internal Revenue, respondent

ON PETITION FOR REVIEW OF DECISION OF THE UNITED STATES BOARD OF TAX APPEALS

BRIEF FOR THE RESPONDENT

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BRIEF FOR THE RESPONDENT

OPINION BELOW

The sole previous opinion in this case is the opinion of the Board of Tax Appeals (R. 19–27), which is reported at 37 B. T. A. 36.

JURISDICTION

This proceeding involves a deficiency in estate tax in the amount of $11,256.84. From a decision of the Board of Tax Appeals entered on January 10, 1938 (R. 28), the case is brought to this Court

by a petition for review filed March 29, 1938 (R. 29–33), pursuant to the provisions of Sections 1001–1003 of the Revenue Act of 1926, c. 27, 44 Stat. 9, as amended by Section 1101 of the Revenue Act of 1932, c. 209, 47 Stat. 169.

QUESTION PRESENTED

Whether the amount allowable as a deduction, in the computation of the decedent's estate, as a claim against the estate on account of a liability for the payment of an annuity undertaken by the decedent during his lifetime was correctly determined by the Commissioner and the Board.

STATUTE AND REGULATIONS INVOLVED

The statute and regulations involved are set forth in the Appendix, *infra,* pp. 17–23.

STATEMENT

Although several issues were raised in the petitioners' appeal to the Board of Tax Appeals (R. 6), only one of those issues was presented to the Board for decision (R. 20) and brought here for review. The Board found the facts on that issue substantially as follows (R. 20–22):

The petitioners, hereinafter referred to as the taxpayers, are administrators of the estate of Herbert A. Schoenfeld, a resident of the State of Washington, who died on April 21, 1933, and whose estate is subject to administration under the laws of that State. (R. 20.)

On December 10, 1923, Berman Schoenfeld, the decedent, and his wife, Bessie B. Schoenfeld, entered into a contract (R. 34–39) whereby they acquired from Maude Falk Schoenfeld 25.15 shares of the stock of the Schoenfeld Holding Corporation, one-half of those shares becoming the property of Berman Schoenfeld and one-fourth becoming the property of each of the other two purchasers, the decedent and his wife. As a consideration the purchasers agreed to pay to the seller for life such sums as the seller might require for living expenses, the monthly sum being fixed at $1,000, with the agreement that it should not exceed $1,500 per month. The purchasers further agreed, as part of the consideration, that upon the death of the seller they would pay monthly incomes for life to the brothers or sisters of the seller as the seller should direct by will, but not to exceed $500 per month. In 1926, by a supplemental agreement (R. 69–74), the contract was amended to provide that one of the seller's sisters, Beatrice R. Falk, should, if she survived the seller, be assured a life income of $1,000 per month if that amount was needed for her care and support. No payments have been made under this amendment. As security for the payments to be made by the purchasers under the contract, they agreed (R. 37–38) to and did deposit the 25.15 shares of stock in escrow with a bank (R. 20–21).

The seller of the stock, Maude Falk Schoenfeld, died prior to June 26, 1931, and the decedent's wife, Bessie B. Schoenfeld died on June 26, 1931.

By her will (R. 41–46) the decedent's wife devised her community interest in the Schoenfeld Holding Corporation stock to her husband for life with remainder over to her sons, and she directed that her community liability on account of the purchase of the stock be paid by her husband out of the earnings of her community half of the stock (R. 21–22, 43).

At the time of the decedent's death there were four persons living, aged respectively 48, 58, 59 and 70, who were entitled to benefits under the stock purchase contract. In June, 1933, one of the four beneficiaries, on behalf of all four, filed a claim (R. 51–52) against the estate of the decedent in the amount of $65,190 as representing the estate's one-half of the liability under the stock purchase contract of December 10, 1923. The claim was approved (R. 53) by the administrators and by the judge of the probate court having jurisdiction of the estate (R. 22).

In each of the estate tax returns of the decedent and of his wife there was returned as part of the gross estate the value of one-fourth of the 25.15 shares of stock. In auditing these returns the Commissioner in each estate allowed, as a deduction, the amount which he determined as representing one-fourth of the entire contract liability. In the estate of the decedent, here involved, the taxpayers claimed a deduction for the decedent's contract liability in the amount of $65,190. The Com-

missioner, in his determination, allowed a deduction of $24,226.79 on account of the decedent's liability under the contract and, upon the basis of this and other items, determined a deficiency in estate tax. (R. 12–17, 22.)

In their appeal to the Board of Tax Appeals the taxpayers asserted that the Commissioner erred in reducing the deduction for the decedent's liability under the contract from $65,190 to $24,226.79, claiming in that connection that the Commissioner had erred in two respects, first, in determining the amount allowable upon the basis of one-fourth of the total liability under the contract instead of one-half, and, second, in computing the amount allowable according to a formula based on mortality, interest, and present worth tables. (R. 6, 8–11, 22–23.) The Board, holding against the taxpayers on both contentions, sustained the action of the Commissioner. (R. 22–27.)

SUMMARY OF ARGUMENT

The Commissioner, in the computation of the decedent's estate tax liability, correctly determined the amount allowable as a deduction as a claim against the estate for the annuity which the decedent, with others, had undertaken to pay. The Board correctly sustained the action of the Commissioner. The taxpayers have failed to show any error on the part of the Commissioner either in determining the amount allowable upon the basis of one-fourth of the total liability under the con-

tract, instead of one-half as they contend, or in computing the amount allowable according to a formula based on mortality, interest, and present worth tables.

ARGUMENT

I

A deduction was allowable upon the basis of one-fourth of the total liability under the contract, as the Commissioner and the Board held, rather than on the basis of one-half, as the taxpayers claimed

The Board correctly held that the taxpayers' claim for the allowance of a deduction based upon one-half of the total liability under the contract failed for several reasons. (R. 24.) The taxpayers attack (Br. 18–26) the reasoning of the Board with a variety of contentions, of which only the more material and important ones will be answered herein.

As pointed out by the Board (R. 24), since only one-fourth of the value of the stock was included in the decedent's estate, the claim for the allowance of one-half of the liability under the contract is erroneous in view of the statutory provision which requires an equality of treatment of the value of property returned and the amount of indebtedness against it. Section 303 (a) (1) of the Revenue Act of 1926, as amended by Section 805 of the Revenue Act of 1932, Appendix, *infra*. Because of that provision of the statute requiring such equality of treatment, only one-fourth of the

liability on the stock can be deducted where only one-fourth of the stock is included in the estate. See Article 38 of Regulations 80, Appendix, *infra.* See also *Parrott* v. *Commissioner*, 30 F. (2d) 792 (C. C. A. 9th), certiorari denied, 279 U. S. 870.

Furthermore, as pointed out by the Board (R. 24), since under the contract the decedent was entitled to a one-fourth interest in the stock, if he assumed a liability for any greater proportion or amount, the excess cannot be said to have been "contracted bona fide and for an adequate and full consideration in money or money's worth" as required by the statute. Any such excess liability would not be for an adequate consideration and a claim on account thereof would not be deductible from the decedent's estate. Section 303 (a) (1) of the Revenue Act of 1926, as amended by Section 805 of the Revenue Act of 1932, Appendix, *infra;* Regulations 80, Article 36 (Appendix, *infra*), Article 29; *Lang's Estate* v. *Commissioner,* 97 F. (2d) 867, 872 (C. C. A. 9th); *United States* v. *Mitchell,* 74 F. (2d) 571, 573 (C. C. A. 7th).

In view of the community property law of the State of Washington, the allowance of a deduction by the Commissioner of only one-half of the community liability, i. e., one-fourth of the entire liability under the contract, was correct, as was indicated by the Board. (R. 24–25.) At the time of the wife's death her one-half share of the community stock had been included in her estate and a de-

duction had been allowed for her half of the community debt thereon, i. e., one-fourth of the entire contract liability. (R. 22, 40, 46–47.) Upon the death of the husband, the other half of the stock was included in his estate and the Commissioner allowed, as a deduction, one-half of the community debt thereon, i. e., one-fourth of the total contract liability. This treatment is in keeping with the law of Washington that the share of the decedent and the share of the surviving spouse are each subject to one-half of the community debts. *Lang's Estate* v. *Commissioner, supra,* pp. 870–871. The taxpayers concede (Br. 20) that the Board was right in deciding that under the Washington law only one-half of the community debts may be deducted from the decedent's half of the property, but they claim that the entire community liability is deductible from the decedent's estate because the decedent became liable to pay the wife's half of the community debt when he took part of her estate as residuary legatee and, moreover, when he took a life interest in her half of the stock subject to her direction that he discharge her share of the community debt thereon (Br. 20–26). It must be noted at the outset that these arguments overlook the important fact that the stock itself was charged with the debt and that the obligation for the annuity was a lien on the stock, which was deposited in escrow to secure its discharge (R. 37–38)—regardless of any disposition or direction made in the will of the

wife. However, these arguments are wholly without merit for the more important reason that they are not supported by the facts as found by the Board (R. 20–22) or the record as a whole. Upon the death of the wife, her separate estate and her share of the community property became charged with the obligation to pay one-fourth of the total contract liability for the annuity, and a deduction on that account was allowed against her estate in determining her Federal estate tax (R. 40, 47), so that for all the record shows the obligation of the wife under the contract was discharged in the administration of her estate. Moreover, since he was her executor (R. 41, Br. 23) and her residuary legatee (R. 44–45, Br. 22–23), and since her will directed (R. 45) that, after the filing of an inventory and the giving of required notices, her estate be managed and settled by the executor without further reports, orders or proceedings in the probate court, it is possible, for all that this record shows, that the property which the taxpayers claim (Br. 22–23) constituted the residue of the wife's estate and was identified in the decedent's estate as property previously taxed in her estate, included a fund which decedent may have been holding (as executor of her estate) to satisfy the liability of the wife or her estate under the contract—and the amount of this previously taxed property has been allowed as a deduction in the decedent's estate (R. 16–17, Br. 18), in keeping with the provisions of

the statute. Section 303 (a) (2) of the Revenue Act of 1926, as amended by Section 806 of the Revenue Act of 1932, Appendix, *infra.* This, we submit, is a complete answer to all the arguments (Br. 20–27) for charging the decedent's estate with the wife's portion of the liability based either on the provisions of the will directing him to pay it out of dividends or based on the residuary legacy. Of course, any attempt to charge him with her portion because of the community nature of the debt is answered by this Court in the *Lang* case, *supra.*

The fact that the probate court has allowed the claim of the annuitants to the extent of a sum claim to represent one-half of the total contract liability is, as the Board correctly recognized (R. 26–27), not determinative of the amount allowable in this proceeding. *Lang* v. *Commissioner,* 34 B. T. A. 337, 345, later decided by this Court as *Lang's Estate* v. *Commissioner, supra; United States* v. *Mitchell, supra; Buck* v. *Helvering,* 73 F. (2d) 760, 765 (C. C. A. 9th). The provision of the Federal taxing statute here involved sets up its own tests of deductibility. "The Act of Congress has its own criteria" (*Weiss* v. *Wiener,* 279 U. S. 333, 337), which are controlling. See *Angelus Building & Investment Co.* v. *Commissioner,* 57 F. (2d) 130 (C. C. A. 9th), and *Strother* v. *Commissioner,* 55 F. (2d) 626 (C. C. A. 4th), and cases therein cited. The action of the probate court in allowing the claim is not one of those matters of local law, such

as property rights, ownership and the like, which have been recognized to be controlling in the application of provisions of Federal taxing acts which depend on matters of property rights or ownership. See *Blair* v. *Commissioner,* 300 U. S. 5; *Poe* v. *Seaborn,* 282 U. S. 101; *Lang* v. *Commissioner,* 304 U. S. 264; *Burnet* v. *Harmel,* 287 U. S. 103. Furthermore, it may be pointed out that the testimony of L. Kenneth Schoenfeld, one of the administrators of the decedent who approved (R. 47) the claim against the estate, certainly does not indicate (R. 49–50) that there was "an active and genuine contest" such as Article 30 of Regulations 80, Appendix, *infra,* contemplates as a condition to the acceptance—where such acceptance is otherwise warranted—of the decision of a local court as to the amount of a claim.

II

The Commissioner correctly computed the amount allowable according to a formula based on mortality, interest, and present worth tables

Since the annuity was payable for the life of the survivor of the four named persons, the amount of the annuity obligation can only be estimated. A fair estimate of the amount adequate to discharge the obligation of the annuity contract for the life of the survivor of the group can only be determined through the application of recognized actuarial principles—through the use of mortality, interest, and present worth tables.

The taxpayers concede (Br. 8) the propriety of the use of mortality tables. *Ithaca Trust Co.* v. *United States,* 279 U. S. 151. But the taxpayers claim that, after fixing the expectancy of the annuitants by a mortality table, the amount of the obligation is then found (Br. 9) by simply multiplying such expectancy by the amount of stipulated monthly payments. However, the time element inherent in an annuity contract requires the discounting of the obligation to pay to a present value as of the date of death in order to fix its *amount* as of that date. The method of arriving at the amount of an obligation to pay an annuity by taking the present worth value of such obligation actuarially determined has received repeated approval. See *Klein* v. *Commissioner,* 6 B. T. A. 617; *John C. Moore Corp.* v. *Commissioner,* 15 B. T. A. 1140, affirmed, 42 F. (2d) 186 (C. C. A. 2d); *Cromwell* v. *Commissioner,* 24 B. T. A. 461; *Security-First Nat. Bank of Los Angeles* v. *Commissioner,* 35 B. T. A. 815; *Fidelity-Philadelphia Trust Co.* v. *Commissioner,* 27 B. T. A. 972; *Korn* v. *Commissioner,* 35 B. T. A. 1071.

The taxpayers' criticism (Br. 12) of a 4 per cent rate of interest applied by the Commissioner is without merit. A different rate of interest may be used if the facts show justification. See *Security-First Nat. Bank of Los Angeles* v. *Commissioner, supra.* But there is nothing in this record to indicate that the rate of 4 per cent, prescribed by Ar-

ticle 13 (10) of Regulations 80, Appendix, *infra,* and applied by the Commissioner in this case, is unreasonable. *Korn* v. *Commissioner, supra,* at p. 1078. See also *Simpson* v. *United States,* 252 U. S. 547, 550. There is likewise no factual support in this record for the suggested criticism (Br. 8–12) of the use by the Commissioner of the life expectancy of the survivor of the four annuitants rather than of the youngest of the four. That is a question of fact, the determination of which by the Commissioner will stand until overcome by evidence, and no evidence directed thereto is in this record. *Fidelity-Philadelphia Trust Co.* v. *Commissioner, supra,* pp. 979–980. Moreover, the expectancy of the group is greater and therefore more favorable to the taxpayers, as they admit (Br. 8), because it results in a greater deduction—they should therefore not complain.

Nor is there any merit to the contention (Br. 11) that the claim here involved for the payment of $500 per month for 21.73 years is no different from a mortgage for $120,000 payable at the rate of $500 per month. There is an all important difference, we submit. The mortgage is for a fixed amount, $120,000, and that amount, fixed and definite, is the amount of the claim. On the other hand, the amount of an annuity liability is unknown and can only be estimated in order to allow it as a claim. This further demonstrates, we submit, that the charge made by the taxpayers (Br. 12–14), that the

Commissioner has disregarded the statute which provides for the allowance of the "amount" of claims and has allowed the "value" of this claim, is a mere play on words, and wholly without merit. We submit that what the Commissioner has done, in order to arrive at the "amount" allowable as a claim, has been to resort to the only fair, reasonable, and accepted method of estimating and computing the unknown amount of the obligation for the annuity.

The taxpayers have failed, as the Board indicated (R. 27), to prove that the method used by the Commissioner was wrong, arbitrary or unreasonable, and we submit that they do not sustain the burden incumbent upon them in this Court in their attack upon the method of computation used simply by characterizing it as an unwarranted wandering "into the realm of higher mathematics" (Br. 9). But the taxpayers, somehow, finally urge (Br. 15–16) that no burden rests upon them to show that the Commissioner erred either in selecting a figure of life expectancy or in using the 4 per cent rate, because they are challenging not the accuracy of those factors but the right of the Commissioner to use them or to use "any factors whatsoever" (Br. 16). A complete answer to this argument is that the amount of the claim for the obligation can only be arrived at *by a computation* based on *some factors* and, since the taxpayers admit (Br. 16) that the Commissioner "has used a

method which is as good as any other method'', the computation of the amount made by the Commissioner should therefore be affirmed.

The correctness of the method of computation used by the Commissioner is further established by the fact that it is the same method provided for in the regulations to compute the amount of an annuity payable to a decedent. Regulations 80, Article 13 (10), Appendix, *infra.* If the decedent, instead of being obligated to pay an annuity, had been entitled to receive one for the life of the group, the amount includable in his estate would have been computed, according to the regulations, upon the basis of present worth, interest and mortality tables, and not by any ''simple'' or ''unmathematical'' formula such as the taxpayers suggest (Br. 9). There is no reason for failing to apply the present worth rule both ways.

It might be pointed out in passing that it is neither significant nor material here, as the taxpayers contend (Br. 14–15), that courts have held that under the statute a claim must be allowed as a deduction in computing Federal tax liability although there were no assets in the estate for its payment.

Finally, it must be remembered that the allowance of deductions is a matter of legislative grace and to be entitled to a deduction a taxpayer must bring himself squarely within the terms of the statute granting the deduction. *New Colonial Co.* v.

Helvering, 292 U. S. 435. The determination of the Commissioner is presumptively correct, and the taxpayer has the burden of proving it wrong. *Welch* v. *Helvering*, 290 U. S. 111; *Burnet* v. *Houston*, 283 U. S. 223.

CONCLUSION

The decision of the Board of Tax Appeals is correct and should therefore be affirmed.

Respectfully submitted.

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February 1939.

APPENDIX

Revenue Act of 1932, c. 209, 47 Stat. 169:

SEC. 805. DEDUCTIONS.

Section 303 (a) (1) of the Revenue Act of 1926, as amended, is amended to read as follows:

"(1) Such amounts—

"(A) for funeral expenses,

"(B) for administration expenses,

"(C) for claims against the estate,

"(D) for unpaid mortgages upon, or any indebtedness in respect to, property where the value of decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate, and

"(E) reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent,

as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or property taxes not accrued before his death, or any estate, succession, legacy, or inheritance taxes. The deduction herein allowed in the case of claims against the estate, unpaid mortgages, or any indebtedness shall, when founded upon a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth. There shall also be de-

ducted losses incurred during the settlement of estates arising from fires, storms, shipwrecks, or other casualties, or from theft, when such losses are not compensated for by insurance or otherwise, and if at the time of the filing of the return such losses have not been claimed as a deduction for income tax purposes in an income tax return." (U. S. C., Title 26, Sec. 412.)

SEC. 806. PRIOR TAXED PROPERTY.

(a) Section 303 (a) (2) of the Revenue Act of 1926 is amended to read as follows:

"(2) An amount equal to the value of any property (A) forming a part of the gross estate situated in the United States of any person who died within five years prior to the death of the decedent, or (B) transferred to the decedent by gift within five years prior to his death, where such property can be identified as having been received by the decedent from the donor by gift, or from such prior decedent by gift, bequest, devise, or inheritance, or which can be identified as having been acquired in exchange for property so received. This deduction shall be allowed only where a gift tax imposed under the Revenue Act of 1932, or an estate tax imposed under this or any prior Act of Congress, was finally determined and paid by or on behalf of such donor, or the estate of such prior decedent, as the case may be, and only in the amount finally determined as the value of such property in determining the value of the gift, or the gross estate of such prior decedent, and only to the extent that the value of such property is included in the decedent's gross estate. Where a deduction was allowed of any mortgage or other lien in determining the gift tax, or the estate tax of the prior de-

cedent, which was paid in whole or in part prior to the decedent's death, then the deduction allowable under this paragraph shall be reduced by the amount so paid. The deduction allowable under this paragraph shall be reduced by an amount which bears the same ratio to the amounts allowed as deductions under paragraphs (1), (3), and (4) of this subdivision as the amount otherwise deductible under this paragraph bears to the value of the decedent's gross estate. Where the property referred to in this paragraph consists of two or more items the aggregate value of such items shall be used for the purpose of computing the deduction." (U. S. C., Title 26, Sec. 412.)

* * * * *

Treasury Regulations 80 (1934 Edition):

ART. 13. *Valuations.*—* * *

* * * * *

(10) *Annuities, life, remainder, and reversionary interests.*—In the case the decedent was entitled to receive an annuity of a definite amount during the lifetime of another person, payable at the end of annual periods, its present worth at the time of the decedent's death must be computed upon the basis of the value of a life annuity at the age of the other person. The table marked "A", a part of this subdivision, should be used for this computation. The amount payable annually should be multiplied by the figure in column 2 of the table opposite the number of years in column 1 nearest to the actual age of the other person.

Example: * * *

If the decedent was entitled to receive the annuity during a specified number of years,

the table marked "B", a part of this subdivision, should be used.

Example: * * *

If the decedent was entitled to receive the entire income of certain property during the life of another person, or for a term of years, and the annual rate of income for a period equal to or exceeding the life expectancy of such other person or such term of years, is fixed or definitely determinable at the time of the decedent's death, then the present worth of decedent's right to such income should be computed as explained above in the case of an annuity.

Example: * * *

If the rate of annual income is not determinable, or where the decedent was entitled merely to the personal use of nonincome-bearing property, a hypothetical annuity at a rate of 4 percent of the value of the property should be made the basis of the calculation.

Example: * * *

If the decedent had a remainder interest in property subject to the life estate of another, and such interest constituted an asset of his estate, the present worth of the remainder interest at the time of death should be obtained by multiplying the value of the property at the time of death by the figure in column 3 of Table A opposite the number of years nearest to the age of the life tenant. If the remainder interest is subject to an estate for a term of years Table B should be used.

* * * * *

If the annuity is payable during the life of an individual and in any event for a definite number of years, or for more than one life, or in any other manner rendering in-

applicable Table A or Table B (also a part of this subdivision), the case may be stated to the Commissioner, who will thereupon make the computation and advise the executor thereof. In making such calculations, when life interests or remainders upon life interests are involved, use will be made of the Actuaries' or Combined Experience Table of Mortality, as extended (that being the basis of Table A), with interest at 4 percent per annum compounded annually.

TABLE A

Table, single life, 4 per cent, showing the present worth of an annuity, or a life interest, and of a reversionary interest

*   *   *   *   *

TABLE B

Table showing the present worth at 4 per cent of an annuity for a term-certain, and of a reversionary interest postponed for a term-certain

*   *   *   *   *

ART. 30. *Effect of court decree.*—The decision of a local court as to the amount of a claim or administration expense will ordinarily be accepted if the court passes upon the facts upon which deductibility depends. If the court does not pass upon such facts its decree will, of course, not be followed. For example, if the question before the court is whether a claim should be allowed, the decree allowing it will ordinarily be accepted as establishing the validity and amount of the claim. The decree will not necessarily be accepted even though it purports to decide the facts upon which deductibility depends. It must appear that the court actu-

ally passed upon the merits of the case. This will be presumed in all cases of an active and genuine contest. If the result reached appears to be unreasonable, this is some evidence that there was not such a contest, but it may be rebutted by proof to the contrary. If the decree was rendered by consent, it will be accepted, provided the consent was a bona fide recognition of the validity of the claim—not a mere cloak for a gift—and was accepted by the court as satisfactory evidence upon the merits. It will be presumed that the consent was of this character, and was so accepted, if given by all parties having an interest adverse to the claimant. The decree will not be accepted if it is at variance with the law of the State; as, for example, an allowance made to an executor in excess of that prescribed by statute.

Art. 36. *Claims against the estate.*—The amounts that may be deducted under this heading are such only as represent personal obligations of the decedent existing at the time of his death, whether then matured or not, and any interest thereon which had accrued at time of death. Only claims enforceable against the estate may be deducted. If the claim is founded upon a promise or agreement the deduction therefor is limited to the extent that the liability was contracted bona fide and for an adequate and full consideration in money or money's worth. A pledge or a subscription, evidenced by a promissory note or otherwise, even though enforceable against the estate, is deductible only to the extent such pledge or subscription was made bona fide and for an adequate and full consideration in cash or its equivalent. See article 29 as to relinquishment or promised relinquishment of dower and similar in-

terests. Liabilities imposed by law or arising out of torts are deductible.

ART. 38. *Unpaid mortgages.*—The full amount of unpaid mortgages upon, or any indebtedness in respect to, property included in the gross estate may be deducted, including interest which had accrued at the time of death, whether payable at that time or not, but only to the extent that the liability for such mortgages or indebtedness was contracted bona fide and for an adequate and full consideration in money or money's worth. The full value of the property, without any deduction for mortgages or indebtedness, must be returned as part of the gross estate. Real property situated outside the United States does not form a part of the gross estate, and no deduction may be taken of any mortgage thereon, or any indebtedness in respect thereto.

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